



INTERNATIONAL TRADE COMMISSION

Certain Vaporizer Cartridges and Components Thereof

[Investigation No. 337-TA-1211]

Notice of Commission Determination to Review in Part an Initial Determination Granting a Motion for Summary Determination on Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part an initial determination (“ID”) (Order No. 65) of the presiding administrative law judge (“ALJ”) granting a summary determination on violation of section 337 by the respondents found in default in the above-captioned investigation. The Commission is requesting briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 14, 2020, the Commission instituted this investigation based on a complaint, as supplemented, filed on behalf of Juul Labs, Inc. (“JLI”) of San Francisco, California. 85 FR 49679 (Aug. 14, 2020). The complaint, as supplemented,

alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vaporizer cartridges and components thereof by reason of infringement of U.S. Design Patent Nos. D842,536; D858,870; D858,869; and D858,868 (collectively, the “Asserted Patents”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation names forty-nine respondents, including:

- (1) 101 Smoke Shop, Inc. of Los Angeles, California (“101 Smoke Shop”);
- (2) Eon Pods LLC of Jersey City, New Jersey (“Eon Pods”);
- (3) Jem Pods, U.S.A. of Snellville, Georgia (“Jem Pods”);
- (4) Sky Distribution LLC of Addison, Illinois (“Sky Distribution”);
- (5) Vapers & Papers, LLC of Schenectady, New York (“Vapers & Papers”);
- (6) Access Vapor LLC d/b/a Cali Pods of Orlando, Florida (“Access Vapor”);
- (7) eLiquid Stop of Glendale, California (“eLiquid Stop”);
- (8) Shenzhen Apoc Technology Co., Ltd. of Shenzhen, China;
- (9) Shenzhen Ocity Times Technology Co., Ltd. of Shenzhen, China;
- (10) Evergreen Smokeshop of Oakland, California (“Evergreen Smokeshop”);
- (11) Shenzhen Azure Tech USA LLC f/k/a DS Vaping P.R.C. of Redding, California (“Shenzhen Azure”);
- (12) DripTip Vapes LLC of Plantation, Florida (“DripTip Vapes”);
- (13) Modern Age Tobacco of Gainesville, Florida (“Modern Age Tobacco”);
- (14) Dongguan Hengtai Biotechnology Co., Ltd. d/b/a Mr. Fog of Bensenville, Illinois;
- (15) Shenzhen Yark Technology Co., Ltd. of Shenzhen, China;
- (16) Guangdong Cellular Workshop Electronic Technology Co., Ltd. of Dongguan City, China;
- (17) Shenzhen Bauway Technology Ltd. of Shenzhen, China; and
- (18) Shango Distribution LLC d/b/a Puff E-Cig of Imlay City, Michigan (“Shango Distribution”) (collectively, the “Defaulting Respondents”).

See id.; *see also* 85 FR 73748 (Nov. 19, 2020). The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See* 85 FR 49679. The complaint and notice of investigation were later amended to, *inter alia*, correct the names and addresses of certain respondents. *See* 85 FR 73748

This investigation has previously terminated as to twenty-nine respondents pursuant to Commission Rule 210.21(c) (19 CFR 210.21(c)) based on consent orders; and one respondent pursuant to Commission Rule 210.21(a) (19 CFR 210.21(a)) due to JLI's failure to serve that entity with the Complaint and Notice of Investigation. Order No. 23 (Oct. 29, 2020) (terminating and issuing consent order to Midwest Goods), *unreviewed by* Notice (Nov. 18, 2020); Order Nos. 26–29 (Dec. 8, 2020) (terminating and issuing consent orders to Vape 'N Glass, Vaperistas, Aqua Haze, and 2nd Wife Vape), *unreviewed by* Notice (Dec. 22, 2020); Order Nos. 30 & 31 (Dec. 10, 2020) (terminating and issuing consent orders to EZFumes and eJuiceDB), *unreviewed by* Notice (Jan. 4, 2021); Order No. 32 (Dec. 14, 2020) (terminating and issuing a consent order to JC Pods), *unreviewed by* Notice (Jan. 4, 2021); Order Nos. 33 & 34 (Dec. 15, 2020) (terminating and issuing consent orders to Tobacco Alley and WeVapeUSA), *unreviewed by* Notice (Jan. 5, 2021); Order No. 37 (Dec. 30, 2020) (terminating and issuing a consent order to Vape Central Group), *unreviewed by* Notice (Jan. 21, 2021); Order No. 38 (Jan. 5, 2021) (terminating and issuing a consent order to Ana Equity), *unreviewed by* Notice (Jan. 21, 2021); Order Nos. 40–42 (Feb. 1, 2021) (terminating and issuing consent orders to eCig-City, All Puff Store, and Wireless N Vapor Citi), *unreviewed by* Notice (Feb. 16, 2021); Order Nos. 43–48 (Feb. 2, 2021) (terminating and issuing consent orders to JUULSite, Alternative Pods, Limitless Accessories, Price Point, Naturally Peaked Health, and Smoker's Express), *unreviewed by* Notice (Feb. 22, 2021); Order Nos. 49 & 50 (Feb. 3, 2021) (terminating and issuing consent orders to Kind Group and CaryTown), *unreviewed by* Notice (Feb. 22, 2021); Order Nos. 53 & 54 (Feb. 17, 2021) (terminating and issuing consent orders to Cigar Road and Nilkant), *unreviewed by* Notice (Mar. 15, 2021); Order No. 58 (Mar. 18, 2021) (terminating and issuing a consent order to Cloud 99 Vapes), *unreviewed by* Notice (Apr. 2, 2021); Order No. 60 (Apr. 9, 2021) (terminating and issuing a consent order to Canal Smoke), *unreviewed by* Notice, (Apr. 22, 2021); Order No. 61 (Apr. 28, 2021) (terminating and issuing a consent order to Perfect Vape), *unreviewed by* Notice (May 17, 2021); Order No. 51 (Feb. 8, 2021) (terminating investigation as

to Keep Vapor), *unreviewed by* Notice (Feb. 22, 2021). Additionally, Access Vapor LLC and Cali Pods were originally identified as two distinct respondents, *see* 85 FR at 49679–80, however, Cali Pods is a business alias of Access Vapor, *see* ID at 2, n.1.

On March 19, 2021, pursuant to Commission Rule 210.18 (19 CFR 210.18), JLI filed a motion for summary determination that the Defaulting Respondents have violated section 337 through the importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of certain vaporizer cartridges and components thereof that infringe the Asserted Patents. On April 7, 2021, OUII filed a response in support of JLI's motion.

On October 14, 2021, the ALJ issued the subject ID, Order No. 65, granting the motion for summary determination on violation. Specifically, the ID finds, *inter alia*: (1) that JLI established the importation requirement as to each Defaulting Respondent; (2) that JLI established infringement as to the accused products and the Asserted Patents; and (3) that JLI satisfied the domestic industry requirement for each Asserted Patent. The ALJ's Recommended Determination ("RD") on remedy and bonding recommended that the Commission issue a general exclusion order and impose a 100 percent bond during the period of Presidential review. The RD also recommends that the Commission issue cease and desist orders directed to the domestic Defaulting Respondents, namely, 101 Smoke Shop, Eon Pods, Jem Pods, Sky Distribution, Vapers & Papers, Access Vapor, eLiquid Stop, Evergreen Smokeshop, Shenzhen Azure, DripTip Vapes, Modern Age Tobacco, and Shango Distribution.

No party filed a petition for review of the subject ID. The Commission did not receive briefing on the public interest in response to either Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)) or the Federal Register notice published following issuance of the subject ID and RD. 86 FR 58099 (Oct. 20, 2021).

Having examined the record in this investigation, including the ID, the Commission has determined to review in part the ID. The Commission's review is limited to the economic prong of the domestic industry requirement.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* section 337(j), 19 U.S.C. § 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the

Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the RD on remedy and bonding. The Commission is not requesting briefing on the issue under review (*i.e.*, the economic prong of the domestic industry requirement).

In their initial submissions, Complainant and OUII are also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on December 13, 2021. Reply submissions must be filed no later than the close of business on December 20, 2021. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1211) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on November 29, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 29, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

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